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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,518	05/18/2001	Alessandro Seneci	622-46	4287

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EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

13

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,518

Applicant(s)

SENECI, ALESSANDRO

Examiner

Keith Hendricks

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1,2,4-6,8-11 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,2,8-11 and 27 is/are rejected.
- 7) ☐ Claim(s) 4-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 12
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1761

DETAILED ACTION

Currently, claims 1-2, 4-6, 8-11 and 27 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 8-11 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Yotka et al. The reference and rejection are taken as cited in a previous Office action.

Applicant's arguments filed March 31, 2003 have been fully considered but they are not persuasive. At page 6 of the response, applicants state that the reference does not anticipate the claims because "Raftilose is hydrolyzed inulin which is not the same as inulin." Further, applicant states that "the fact that Raftilose is available from the supplier in powdered form does not mean that the chewing gums disclosed by Yotka are in powdered form."

Applicant's arguments are not deemed persuasive for the reasons of record. Initially, the Examiner agrees with applicant's statement that "Raftilose is hydrolyzed inulin which is not the same as inulin." However, the teachings of the reference are not solely limited to Raftilose and therefore, hydrolyzed inulin. At column 3, lines 59-60, the reference states that "*as disclosed herein, oligofructose is defined as inulin and inulin-oligosaccharides*" (emphasis added). At column 3, lines 65-66, it is stated that "Raftiline oligofructose is the natural carbohydrate inulin." Column 4 teaches that Raftiline is commercially available in powdered form (ln. 33-34). Col. 4, lines 34-35 state that "*all of these forms, except Raftisweet, are referred to herein as oligofructose*" (emphasis added). Thus, the reference clearly teaches the use of inulin itself, in powdered form (Raftiline), in addition to hydrolyzed inulin (Raftilose).

In response to applicant's statement that the chewing gums of the reference are not in powder form, unlike the amended claim products, this again is not deemed persuasive for the reasons of record. As previously addressed on the record, at col. 4, lines 20-35, the reference discloses known products, including Raftiline (powdered inulin) and Raftilose 95. At several passages throughout the reference, the *initial co-drying* of the oligofructose, such as Raftiline/inulin, with the additional sweetener, such as

Art Unit: 1761

aspartame, is disclosed, thus producing a powder composition *before* incorporation into the chewing gum. In fact, several passages provide for "isolating the oligofructose bulk sweetener from other chewing gum ingredients (col. 6-7). Thus, the state and form of the chewing gum end products of the reference are irrelevant to the powdered sweetener compositions taught by the reference, for subsequent use in the chewing gums.

Although apparently directed to the Motte reference, regarding applicant's comments at page 7 of the response, it is noted that the claimed *compositions* are not limited for use in beverages.

Conclusion

Claims 4-6 remain free of the prior art of record, and are objected to as being dependent upon a rejected claim.


Applicant's amendment (adding claim 27) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9565 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


KEITH HENDRICKS
PRIMARY EXAMINER